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By: **Delegates Stull, Aumann, Bartlett, Bates, Cane, G. Clagett, V. Clagett, Cluster, Edwards, Elliott, Frush, Glassman, Hogan, Holmes, Jennings, Kelly, Krebs, Malone, McConkey, McKee, Montgomery, Myers, Owings, Parrott, Shank, Sossi, Stocksdale, Weir, and Weldon**

Introduced and read first time: February 20, 2004  
Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Milk Products - Threat to Public Health - Impoundment and Penalties**

3 FOR the purpose of requiring the Secretary of Health and Mental Hygiene to  
4 impound a milk product that the Secretary determines is a certain threat to  
5 public health; authorizing the Secretary to issue certain orders if the Secretary  
6 impounds a certain milk product; authorizing the owner of a milk product that is  
7 disposed of or otherwise made unusable to bring an action for damages against  
8 the Secretary; providing that the Secretary has certain immunity from liability;  
9 requiring an order of the Secretary that imposes a civil monetary penalty to  
10 state certain information; authorizing a person subject to a civil monetary  
11 penalty to appeal the order in a certain manner; and generally relating to milk  
12 products that are a threat to public health.

13 BY repealing and reenacting, with amendments,  
14 Article - Health - General  
15 Section 21-428  
16 Annotated Code of Maryland  
17 (2000 Replacement Volume and 2003 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Health - General**

21 21-428.

22 [(a) The Secretary shall impound a milk product that has been handled  
23 improperly or has not been kept at the required temperature and shall dispose of the  
24 milk product in accordance with the health laws of this State.]

25 (A) (1) THE SECRETARY SHALL IMPOUND A MILK PRODUCT THAT THE  
26 SECRETARY DETERMINES IS A THREAT TO PUBLIC HEALTH.

1           (2)     FOR PURPOSES OF THIS SUBSECTION, A THREAT TO PUBLIC HEALTH  
2 EXISTS IF A MILK PRODUCT INTENDED FOR CONSUMPTION:

3                   (I)     IS HANDLED IMPROPERLY;

4                   (II)    IS NOT KEPT AT THE REQUIRED TEMPERATURE;

5                   (III)   IS INJURIOUS TO HEALTH IF CONSUMED; OR

6                   (IV)   IS OTHERWISE UNSAFE.

7     (B)     IF THE SECRETARY IMPOUNDS A MILK PRODUCT UNDER SUBSECTION (A)  
8 OF THIS SECTION, THE SECRETARY MAY ISSUE AN ORDER TO DISPOSE OF THE MILK  
9 PRODUCT, MAKE THE MILK PRODUCT UNUSABLE FOR CONSUMPTION, OR IMPOSE A  
10 CIVIL MONETARY PENALTY IN ACCORDANCE WITH THE HEALTH LAWS AND  
11 REGULATIONS OF THE STATE.

12    (C)     (1)     THE OWNER OF THE MILK PRODUCT THAT IS DISPOSED OF OR  
13 OTHERWISE MADE UNUSABLE UNDER SUBSECTION (B) OF THIS SECTION MAY BRING  
14 AN ACTION FOR DAMAGES AGAINST THE SECRETARY.

15           (2)     THE SECRETARY SHALL HAVE THE IMMUNITY FROM LIABILITY  
16 DESCRIBED IN § 5-633 OF THE COURTS ARTICLE IN ANY ACTION BROUGHT UNDER  
17 THIS SUBSECTION.

18    (D)     (1)     AN ORDER OF THE SECRETARY THAT IMPOSES A CIVIL MONETARY  
19 PENALTY UNDER SUBSECTION (B) OF THIS SECTION SHALL STATE THE BASIS ON  
20 WHICH THE ORDER IS MADE, THE AMOUNT OF THE PENALTY, AND THE MANNER IN  
21 WHICH THE AMOUNT OF THE PENALTY IS CALCULATED AS SPECIFIED BY  
22 REGULATION.

23           (2)     A PERSON SUBJECT TO A CIVIL MONETARY PENALTY IMPOSED  
24 UNDER SUBSECTION (B) OF THIS SECTION MAY APPEAL THE ORDER THAT IMPOSES  
25 THE PENALTY IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE  
26 GOVERNMENT ARTICLE.

27    [(b)]   (E)     If a retail establishment repeatedly fails to handle and maintain milk  
28 products properly, the Secretary, after due notice, may order that retail establishment  
29 to stop selling milk products until the establishment shows that it can and will handle  
30 and keep its milk products properly.

31     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2004.